

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923

No. 126

WILLIAM HENRY PACKARD, APPELLANT,

vs.

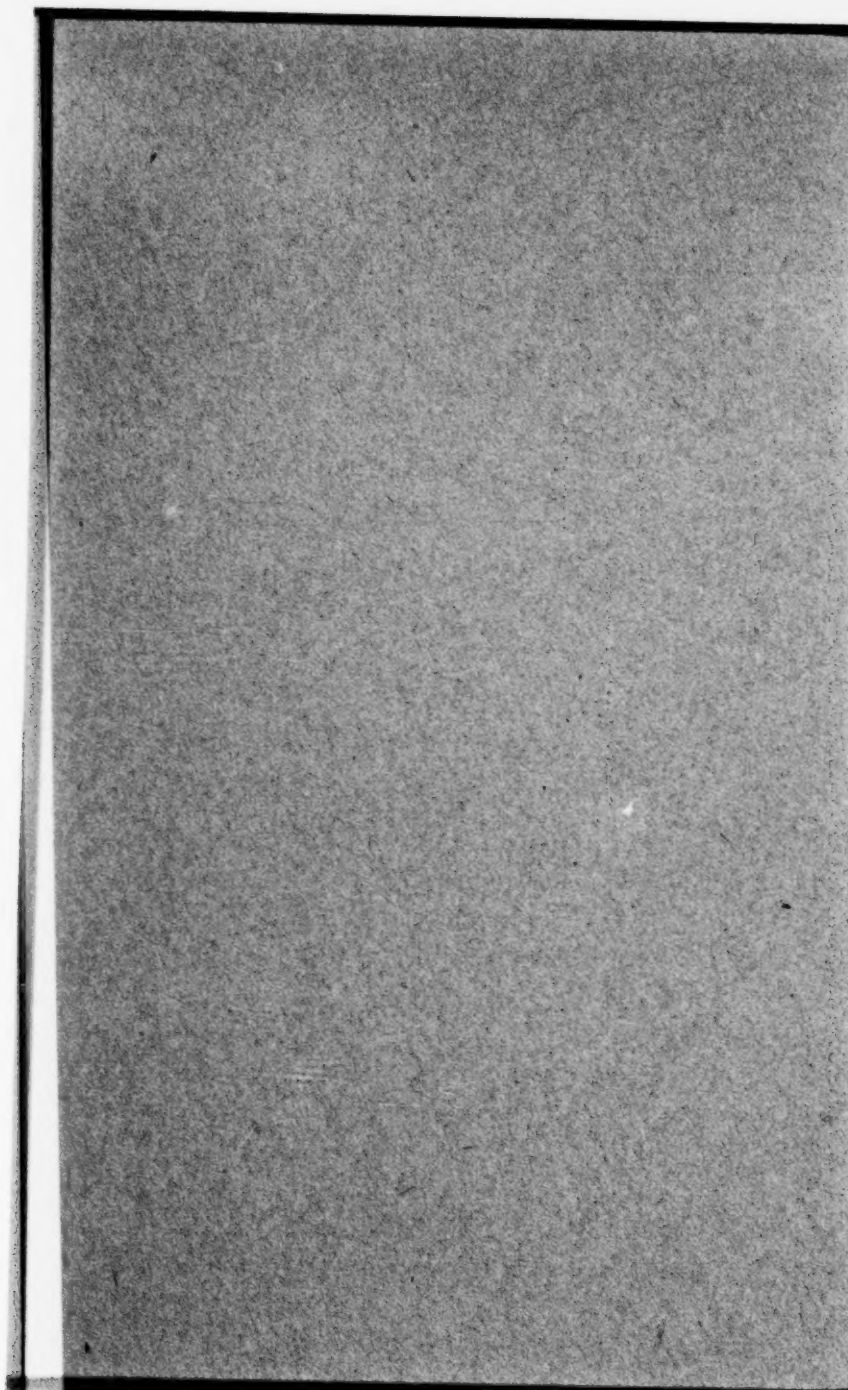
JOAB H. BANTON, AS DISTRICT ATTORNEY IN AND FOR  
THE COUNTY OF NEW YORK, AND CHARLES D.  
NEWTON, AS ATTORNEY GENERAL FOR THE STATE  
OF NEW YORK.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF NEW YORK.

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FILED SEPTEMBER 22, 1923.

(29,157)



(29,157)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 607.

WILLIAM HENRY PACKARD, APPELLANT,

*vs.*

JOAB H. BANTON, AS DISTRICT ATTORNEY IN AND FOR  
THE COUNTY OF NEW YORK, AND CHARLES D.  
NEWTON, AS ATTORNEY GENERAL FOR THE STATE  
OF NEW YORK.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Record from the U. S. district court for the southern district of New York.....	1	1
Citation and service.....	1	1
Order to show cause.....	3	1
Bill of complaint.....	4	2
Answer .....	9	7
Notice of motion to dismiss.....	11	8
Motion to dismiss bill of complaint.....	12	9
Order denying motion for injunction <i>pendente lite</i> and dismissing bill of complaint.....	15	10
Statement of facts.....	16	11
Affidavit of William Henry Packard.....	18	12
Table of deaths from automobile accidents in New York, 1918 and 1919.....	19	13

	Original.	Print.
Affidavit of Patrick J. Devine.....	20	14
Gennaro Pucilla.....	21	15
Morris Pollock.....	22	16
Louis Warshaw.....	23	17
Charles C. Schwartz.....	24	18
Table of deaths from automobile accidents in New York, 1920 and 1921.....	25	19
Further affidavit of William Henry Packard.....	26	21
Affidavit of Henry J. Drake.....	27	22
Report of grand jury of New York County to Hon. John F. McIntyre.....	33	25
Affidavit of Jacob Kendrick Upton.....	35	26
William Cooper.....	38	28
William F. McGuirk.....	40	29
Order settling statement of facts.....	42	29
Stipulation as to statement of facts.....	43	30
Petition for appeal.....	44	30
Assignment of errors.....	45	31
Bond on appeal.....	47	31
Order allowing appeal, fixing bond, and enlarging time....	49	32
Stipulation as to transcript.....	50	33
Clerk's certificate.....	51	33

UNITED STATES OF AMERICA, ss:

Joab H. Banton, as District Attorney in and for the County of New York, and Charles D. Newton, as Attorney General for the State of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days on the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the District Court of United States for the Southern District of New York, wherein William Henry Packard is appellant and you are appellees, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should be done to the parties in that behalf.

Witness, the Honorable William Howard Taft, Chief Justice of the United States, this Second day of August, in the year of our Lord one thousand nine hundred and twenty-two.

AUGUSTUS N. HAND,  
*United States District Judge.*

[Endorsed:] Citation. District Attorney's Office. Received 5.28 p. m., Aug. 3, 1922. Copy received. Dated, New York, Aug. 4, 1922. Joab H. Banton, District Attorney, by John L. Kavanagh, Chief Clerk, per W. P. P.. Copy of within paper received Aug. 3, 1922. Chas. D. Newton, Attorney General. Service of this citation is hereby accepted this 3 day of August 1922.

At a Term of the United States District Court for the Southern District of New York Held on the 20th day of June, 1922.

Present: Hon. Martin T. Manton, U. S. Circuit Judge.

WILLIAM HENRY PACKARD, Plaintiff,

against

JOAB H. BANTON, District Attorney in and for the County of New York, and Charles D. Newton, Attorney General of the State of New York, Defendants.

On reading the Bill of Complaint of William Henry Packard,

ordered that the defendants do on the 23rd day of June, 1922, show cause why a preliminary injunction should not issue as prayed in the Bill of Complaint.

MANTON,  
*U. S. Circuit Judge.*

Endorsed: Filed June 20, 1922.

4 In the District Court of the United States for the Southern  
District of New York.

WILLIAM HENRY PACKARD, Plaintiff,  
against

JOAB H. BANTON, District Attorney in and for the County of New  
York, and Charles D. Newton, Attorney General of the State of  
New York, Defendants.

To the Honorable the Judges of said Court, in Equity Sitting:

William Henry Packard, a citizen and resident of the State of New York and of the Southern District thereof, in behalf of himself and of all other persons similarly situated, brings this suit against Joab H. Banton, District Attorney in and for the County of New York, a citizen and resident of said State of New York and of the Southern District thereof, and Charles D. Newton, Attorney General of the State of New York, a citizen and resident of said State of New York, and complaining avers:

First. The jurisdiction of this Court is invoked under Clause "A," Subdivision 1 of Section 24 of the Federal Judicial Code, the rights of the plaintiff being predicated upon and arising under the Fourteenth Amendment to the Constitution of the United States, as will hereinafter appear, and the sum or value in controversy exceeding, exclusive of interest and costs, \$3,000.00.

Second. Your orator has been and now is engaged in the taxicab business, to wit, carrying and transporting passengers upon and along public streets in Greater New York for hire, operating four cars; that he has, in all respects, complied with the provisions of the City Ordinances and the laws of the State of New York in existence regulating the business of taxicabs for hire.

Third. The General Assembly of the State of New York recently passed an Act entitled, "An Act to Amend the Highway Law, in requiring indemnity bonds or insurance policies from owners of motor vehicles transporting passengers for hire in cities of the first class," amending Chapter 30 of the Laws of 1909, which reads as follows:

#### Chapter 612.

An Act to Amend the Highway Law, in Requiring Indemnity Bonds or Insurance Policies from Owners of Motor Vehicles Transporting Passengers for Hire in Cities of the First Class.

5 Became a law April 13, 1922, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter thirty of the laws of nineteen hundred and nine, entitled "An act relating to highways, constituting chapter twenty-five of the consolidated laws, is hereby amended by inserting therein a new section, to be section two hundred and eighty-two *b*, to read as follows:

§ 282-*b*. Indemnity Bonds or Insurance Policies of the First Class.—Every person, firm, association or corporation, engaged in the business of carrying or transporting passengers for hire in any motor vehicle, except street cars, and motor vehicles operated under a franchise by a corporation subject to the provisions of the public service commission law over, upon or along any public street in a city of the first class shall deposit and file with the state tax commission for each motor vehicle intended to be so operated, either a personal bond, with at least two sureties approved by the state tax commission, a corporate surety bond or a policy of insurance in a solvent and responsible company authorized to do business in the state, approved by the state tax commission, in the sum of two thousand five hundred dollars, conditioned for the payment of any judgment recovered against such person, firm, association or corporation for death or for injury to persons or property caused in the operation or the defective construction of such motor vehicle. Such bond or policy of insurance shall contain a provision for a continuing liability thereunder notwithstanding any recovery thereon. If at any time, in the judgment of the state tax commission, such bond or policy is not sufficient for any cause, the commission may require the owner of such motor vehicle to replace such bond or policy with another approved by the commission. Upon the acceptance of a bond or policy, pursuant to this section, the state tax commission shall issue to the owner of such motor vehicle a certificate describing such vehicle and that the owner thereof has filed a bond, or policy, as the case may be, required by this section. Either a person or corporate surety upon a bond filed pursuant to this section or an insurance company whose policy has been so filed, may file a notice in the office of the state tax commission that upon the expiration of twenty days from such filing such surety will cease to be liable upon such bond, or in the case of such insurance company, that upon the expiration of such time such policy will be canceled. The state tax commission shall thereupon notify the owner of such motor vehicle of the filing of such notice, and unless such owner shall file a new bond or policy of an insurance company, as provided by this section, within such time as shall be specified by the state tax commission, such owner shall cease to operate or cause such motor vehicle to be operated, in such city, and the registration of such motor vehicle shall be automatically revoked. Any person, firm, association or corporation, operating a motor vehicle in a city of the first class, as to which a bond or policy of insurance is required by this section who or which shall operate such vehicle, or cause the same to be operated, while a bond or policy, approved by the state tax commission as required by this section, is not on file with the tax commission, shall be guilty of a misdemeanor.



§ 2. This act shall take effect July first, nineteen hundred and twenty-two.

Fourth. Your orator further avers that said statute imposes burdens upon your orator and other taxicab owners and operators not common to other common carriers, to wit, owners of cars using same as common carriers of goods and chattels who are not within the jurisdiction of the Public Service Commission of the State of New York, i. e., private expressmen and owners of street cars and motor vehicles operated under a franchise by a corporation, subject to the provision of the Public Service Commission Law. Your orator further charges that said statute is unconstitutional and is unequal in its operation and denies him and all other persons similarly situated the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States, and in this connection your orator avers that the classification made by the State of New York by said statute in singling out persons, firms, associations and corporations engaged in the business of carrying and transporting passengers for hire in any motor vehicle upon or along the public streets in the City of New York, and exempting therefrom owners of cars using same as common carriers of goods and chattels who are not within the jurisdiction of the Public Service Commission of the State of New York, i. e., private expressmen and street cars and motor vehicles operated under franchise by a corporation, subject to the Public Service Commission Law of the State of New York, is unreasonable, and arbitrarily discriminates in favor of a part of a class of common carriers and against another class of common carriers to which your orator belongs. Your orator further avers that no reasonable basis in fact exists for exempting street cars and motor vehicles operated under a franchise by a corporation, subject to the provision of the Public Service Commission Law, from furnishing a bond in the sum of \$2,500.00, conditioned for the payment of any judgment recovered against such person, firm, association or corporation for death or injury to persons or property caused in the operation or the defective construction of such motor vehicle, for the reason many persons suffer injury and damages by reason of the negligent operation of such cars and because many street railways and others operating motor vehicles under a franchise subject to the provision of the Public Service Commission Law in the State of New York, have in recent years been unable, by reason of financial reverses or other conditions, to meet, pay and discharge lawful claims for personal injuries sustained by persons and corporations by and through the negligent operation of such cars or motor vehicles, or because of the defective construction of same; that many street railway corporations have gone into receiverships and have been operated by receivers of the respective courts, and that such receivers have not been able to meet, pay and discharge the lawful claims for personal injuries against such street railway corporations. Your orator further avers that said Act above referred to unreasonably discriminates in favor of private owners of motor vehicles and trucks used for the transportation of persons or



freight upon or along any public street in a city of the first class in the State of New York, which class of persons are exempt and are not subject to the provisions of said Act. That said Act thus exempting private owners of motor vehicles and trucks from the operation of said statute is class legislation, and confers a privilege upon such owners which is denied to the class of citizens to which your orator belongs; that no reasonable basis exists for exempting such owners from the operation of said statute for the reason that the operation of motor vehicles by private owners for pleasure or business does not involve less danger to the public using the streets than the operation of motor vehicles by taxicab drivers operating cars for conveyance of passengers for hire; that the number of accidents resulting from the operation of motor vehicles by private owners operating such cars for pleasure or business is far greater than those operated by taxicab drivers; this is due to the fact that taxicab drivers are by law required to have experience and knowledge pertaining to the operation of said motor cars, and required to pass examinations as to their fitness for that purpose; that the standard of fitness demanded and required of taxicab drivers is much higher than the one exacted from owners of cars who operate same for pleasure. Your orator further avers that said Act discriminates and unreasonably imposes burdens upon persons, firms, associations or corporations engaged in the business of transporting passengers for hire in any motor vehicle upon or along the public streets of the City of New York, except street cars and motor vehicles operated under a franchise by a corporation, subject to the provision of the Public Service Commission Law, upon or along any public street in a city of the first class in the State of New York, and exempts from its operation the same class of persons engaged in the business of carrying or transporting passengers for hire in any motor vehicle in cities or villages other than first class cities in said State of New York; that the classification thus made by the State of New York is arbitrary, unreasonable and unequal in its operation and for that reason violates the Fourteenth Amendment to the Constitution of the United States, and denies to your orator and all other persons similarly situated the equal protection of the law; that for the reasons above stated said statute is also in contravention of Article 1, Section 6 of the Constitution of the State of New York.

Fifth. Your orator further avers that the income from the operation of a motor vehicle, such as a taxicab, in the City of New York, is limited by reason of the fact that a rate of fare is fixed by law and a greater rate cannot be collected; that the average net income from the operation of a single taxicab in the City of New York is about \$35.00 per week; that since the passage of said Act, the insurance companies operating in the State of New York have fixed a rate of premium at \$960.00 for the furnishing of a bond required under said Act, which amounts to about \$18.50 per week. Accordingly, your orator avers that the practical result of the administration of said law will be to cut the income of your orator from \$35.00 per week to about \$16.50 per week on each car operated by him, and your orator therefore

charges that the law is confiscatory and will deprive your orator of his property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

Sixth. Your orator further avers that the defendants, as the law enforcing officers of the State of New York, intend to enforce the provisions of the said law, described in paragraph "Third" of this Bill of Complaint, and have announced that they will prosecute your orator and all other persons similarly situated if said law is not complied with, and your orator avers that he verily believes that said defendants will do so unless restrained by a Writ of Injunction duly granted by this Court.

Seventh. Your orator, therefore, being without an adequate remedy at law in the premises, respectfully prays:

First. That the said Act of the General Assembly of the State of New York, entitled "An Act to amend the Highway Law in requiring indemnity bonds or insurance policies from owners of  
8 motor vehicles transporting passengers for hire in cities of the first class," which became a law April 13, 1922, be declared unconstitutional and repugnant to the Fourteenth Amendment to the Constitution of the United States.

Second. That pending the determination of this action, the defendants may be restrained and enjoined from enforcing the said Act against your orator and all other persons similarly situated, and that upon the final hearing such preliminary injunction may be made permanent.

Third. That a subpoena may duly issue requiring the defendants to appear and answer this Bill of Complaint in accordance with the rules in equity in such cases made and provided.

Fourth. And that your orator may have such other and further relief in the premises as in equity and good conscience he may be entitled to.

HOUSE, GROSSMAN & VORHAUS,  
*Solicitors for Plaintiff.*

LOUIS J. VORHAUS,  
ELIJAH N. ZOLINE,  
FREDERICK HEMLEY,  
*Of Counsel.*

STATE OF NEW YORK,  
*County of New York, ss:*

William Henry Packard, being duly sworn, deposes and says: That he is the plaintiff in the above-entitled cause; that the foregoing Complaint by him subscribed was fully read by him and that he knows the contents thereof, and the same is true except as to the matters and things stated by him on information and belief, and as to those matters he believes same to be true.

WILLIAM H. PACKARD.

Sworn to before me this 17th day of June, 1922.

ELIZABETH L. CLARKE,  
*Notary Public.*

New York County No. 145.

New York Registers No. 3047.

Commission Expires March 30, 1923.

9 In the District Court of the United States for the Southern  
District of New York.

WILLIAM HENRY PACKARD, Plaintiff,  
against

JOAB H. BANTON, District Attorney in and for the County of New  
York, and Charles D. Newton, Attorney General of the State of  
New York, Defendants.

Charles D. Newton, Attorney General of the State of New York,  
one of the Defendants in the above entitled suit, answers and says:

I.

I admit the allegations contained in the paragraphs of Complaint  
numbered "First," "Second," "Third" and "Sixth."

II.

I deny the allegations contained in the paragraph of the Com-  
plaint marked "Fourth."

III.

I am without knowledge of the facts alleged in the paragraph of  
the complaint marked "Fifth."

10

CHARLES D. NEWTON,  
*Attorney General of the State of New  
York in Propria Persona, Office &  
Post Office Address The Capitol,  
Albany, N. Y.,*

By CLAUDE T. DAWES,  
EDWARD G. GRIFFIN,  
*Deputies Attorney General.*

Charles D. Newton, being duly sworn, deposes and says: I am the  
Defendant above named; I have read the foregoing answer and I  
know the contents thereof; the same is true to my own knowledge.

CHARLES D. NEWTON.

Sworn to before me this 22nd day of June, 1922.

[SEAL.]

M. M. THOMAS,  
*Notary Public.*

11 District Court of the United States, Southern District of New York.

In Equity.

WILLIAM HENRY PACKARD, Plaintiff,  
against

JOAB H. BANTON, District Attorney in and for the County of New York, and Charles D. Newton, Attorney General of the State of New York, Defendants.

*Notice of Motion.*

SIRS:

Please take notice that the annexed motion to dismiss the bill of complaint herein has this day been filed in the District Court of the United States for the Southern District of New York in the office of the Clerk of the said Court and that the said motion will be set down for hearing and brought on for argument at a stated term of the said Court for the hearing of motions to be held at the Old Post Office in the City and County of New York, Southern District of New York, on the 23rd day of June 1922, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

Dated: New York, June 21, 1922.

Yours, etc.,

JOAB H. BANTON,  
*District Attorney in and for the County of New York.*

JOHN CALDWELL MYERS,  
*Solicitor for Defendant Joab H. Banton,  
District Attorney in and for the  
County of New York.*

32 Franklin Street, New York, N. Y.

To House, Grossman & Vorhaus, Solicitors for Plaintiff, 115 Broadway, New York, N. Y.

Endorsed: Filed July 21, 1922.

2 District Court of the United States, Southern District of New  
York.

In Equity.

WILLIAM HENRY PACKARD, Plaintiff,  
against

JOAB H. BANTON, District Attorney in and for the County of New  
York, and Charles D. Newton, Attorney General of the State of  
New York, Defendants.

*Motion to Dismiss Bill of Complaint.*

Now comes the defendant, Joab H. Banton, District Attorney in  
and for the County of New York, and upon the bill of complaint  
herein moves that the said bill of complaint be dismissed for the fol-  
lowing reasons and upon the following grounds, to-wit:

1. That no sufficient facts are averred in the bill of complaint to  
show that the matter in controversy exceeds, exclusive of interest and  
costs, the sum or value of \$3,000.
2. That it appears upon the face of the bill of complaint that the  
facts stated therein are insufficient to constitute a cause of action in  
equity.
3. That it appears upon the face of the bill of complaint that the  
plaintiff has a plain, adequate and complete remedy at law.
4. That it does not appear upon the face of the bill of complaint  
and no sufficient facts are averred therein to show that the interven-  
tion of a court of equity or the assumption of jurisdiction by such a  
court is necessary or essential in order effectually to protect  
the property or rights of property of the complainant from great  
and irreparable injury or from any injury whatsoever.
5. That Chapter 612 of the Laws of 1922 is a valid statute duly  
passed by the Legislature of the State of New York in the due exer-  
cise of its lawful and constitutional powers; and it does not appear  
from the face of the bill of complaint or from the facts averred  
therein that the said statute, or the enforcement thereof by the State  
of New York by and through its governmental and administrative  
agencies, operates or will operate to deprive or deny the complainant  
the equal protection of the laws, or to deprive him of liberty or of  
his property or rights of property without due process of law.
6. That it appears upon the face of the bill of complaint that to  
grant the relief sought by the complainant would constitute an un-  
lawful and unconstitutional interference by the agencies of the Fed-  
eral Government with the lawful and constitutional power, right and  
duty of the State of New York and its governmental agencies (in-  
cluding the District Attorney of the County of New York) to prose-  
cute violations of a criminal statute of the State of New York.

7. That it appears upon the face of the bill of complaint that this court is without power or authority to grant the relief or to render the judgment and decree prayed for.

8. That no sufficient facts are alleged in the bill of complaint to warrant or justify the granting of the relief prayed for or any other equitable relief.

14 Wherefore, for the reasons and upon the grounds aforesaid, the defendant, Joab H. Banton, District Attorney in and for the County of New York, respectfully moves this Court that the bill of complaint herein be dismissed as to him.

Dated: New York, June 22, 1922.

JOAB H. BANTON,  
*District Attorney in and for the County of New York.*  
JOHN CALDWELL MYERS,  
*Solicitor for Defendant Joab H. Banton,*  
*District Attorney in and for the*  
*County of New York.*

32 Franklin Street, New York, N. Y.

Endorsed: Filed July 21, 1922.

15 In the District Court of the United States, Southern District of New York.

WILLIAM HENRY PACKARD, Plaintiff,  
against

JOAB H. BANTON, District Attorney in and for the County of New York, and Charles D. Newton, Attorney General of the State of New York, Defendants.

This matter having come on to be heard on the return of the order to show cause why a preliminary injunction should not issue as prayed for in the bill of complaint, and the Court having heard the arguments of counsel and being fully advised in the premises, it is

Ordered that the motion for an injunction pendente lite be and the same hereby is denied; it is further

Ordered that the bill of complaint herein be and the same hereby is dismissed for want of equity without prejudice to filing a new bill based on the alleged unconstitutionality of operation or administration of the Statute described in the bill of complaint.

Enter.

C. M. HOUGH,  
*C. J.*  
MARTIN T. MANTON,  
*C. J.*  
AUGUSTUS N. HAND,  
*D. J.*

July 17, 1922.

Endorsed: Filed July 21, 1922.

United States District Court, Southern District of New York.

WILLIAM HENRY PACKARD, Plaintiff,

against

J. H. BANTON, District Attorney in and for the County of New York, and Charles D. Newton, Attorney General of the State of New York, Defendant-.

*Statement of Facts under Equity Rule 75.*

The above entitled cause came on to be heard before Hon. Martin Manton and Hon. Charles M. Hough, United States Circuit Judges and Hon. Augustus N. Hand, United States District Judge on the return of an order to show cause why a preliminary injunction should not issue as prayed for in the bill of complaint to restrain the defendants from enforcing an act of the State of New York entitled as follows:—"An act to amend the highway law, by requiring indemnity bonds or insurance policies from owners of motor vehicles transporting passengers for hire in Cities of the first class," which became a law on April 13th 1922. At said hearing the following papers were presented to the Court for consideration:—

The bill of complaint, the answer of the defendant Charles D. Newton, the motion of the defendant Jacob H. Banton to dismiss, and the affidavits submitted in behalf of the complainant, viz:—the affidavits of William Henry Packard, verified June 17, 1922, and June 22, 1922, the affidavit of Patrick Devine, verified June 19, 1922, the affidavit of Genarro Pucilla, verified June 19, 1922, the affidavit of Louis Warshal, verified June 19, 1922, the affidavit of Charles C. Schwartz, verified June 21, 1922, the affidavits submitted in behalf of the defendants, viz:—the affidavit of Henry J. Drake, verified June 28, 1922, the affidavit of Robert Kendrick Upton, verified June 29, 1922, the affidavit of William E. Cooper, verified June 29, 1922, the affidavit of William E. Quirk, verified June 29, 1922; the said affidavits being in words and figures as follows, to wit:—



18 In the District Court of the United States for the Southern District of New York.

WILLIAM HENRY PACKARD, Plaintiff,

against

JOAB H. BANTON, District Attorney in and for the County of New York, and Charles D. Newton, Attorney General of the State of New York, Defendants.

STATE OF NEW YORK,

*County of New York, ss:*

William Henry Packard, being duly sworn, deposes and says: I am a citizen of the United States and a resident of the State of New York and of the Southern District thereof.

I am the owner of four taxicabs and have been operating taxicabs for upwards of six months in the City of New York.

From my personal experience, and from the experience of others operating taxicabs in the City of New York I know that the average net income of a taxicab driver in the City of New York is not in excess of \$35 per week, and in many instances it is considerably less than \$35 net per week.

I know of my knowledge that all the Insurance Companies doing business in the City of New York have fixed \$960 per year as the premium for a \$2,500 bond as required by the law recently enacted and which law becomes operative on the 1st day of July next. This premium is at the rate of approximately \$18.50 per week.

With a net income not in excess of \$35 per week, and with an obligation to pay approximately \$18.50 per week for the insurance, the net amount in the hands of the taxicab driver would not be in excess of \$16.50 per week.

As a matter of fact, most taxicab owners do not own their cars outright, but purchase their cars subject to a chattel mortgage requiring the payment of a certain amount per month. In most instances the amount paid on account of the chattel mortgage is \$100 per month, plus interest. It is therefore evident that the taxicab driver will not have sufficient money out of his income from his occupation with which to pay the mortgage nor will any money be left from which he and his family may live. A vast majority of the taxicab drivers are married men and have families to support and the additional burden required by the payment of the premium will make it impossible for the taxicab driver to continue in his present calling.

It is to be borne in mind that the rate that the taxicab driver may charge is fixed by law and at the present time the various taxicab drivers do not charge the full rate allowed by law, for the reason that the public would not patronize the taxicabs if the full rate were charged, so that there is no possibility of securing an additional income by charging a greater rate.

A tabulation from the records furnished by the Medical Department of the City of New York was made showing the number of deaths attributable to accidents in the years 1918 and 1919 in the City of New York. Annexed hereto and made a part hereof is a copy of such tabulation.

It will be noted that the total number of deaths attributable to automobile accidents in the City of New York for the year 1918 was 652; of this number 14 are attributable to accidents in which taxicabs figure and 467 are attributable to automobiles other than taxicabs, including private cars, and 171 are attributable to auto trucks, and for the year 1919 the total number of deaths in the City of New York attributable to automobile accidents is 702, and of this number 23 are attributable to accidents in which taxicabs figure and 424 are attributable to automobiles other than taxicabs, including private cars, and 255 to commercial autos. While I did not prepare these statistics myself, I know from my own knowledge and experience that these figures are correct.

I mention these facts merely to show that the taxicab driver is far more competent and far more careful in the operation of his car than is the ordinary private owner.

WILLIAM H. PACKARD.

Sworn to before me this 17th day of June, 1922.

ELIZABETH L. CLARKE,  
Notary Public, New York County, No. 145.

New York Register's No. 3047.  
Commission Expires March 30, 1923.

1918.

*Deaths.*

	Man.	Brk.	Bronx.	Queens.	Rich.	Total.
Taxis .....	12	1	11	..	..	14
Automobiles, incl. private cars .....	237	119	50	31	6	467
Auto truck .....	97	47	17	9	1	171
Horse drawn vehicles....	43	23	5	1	..	72
Street cars .....	54	32	9	4	1	100
El. & Subway (incl. B. R. T. wreck) .....	23	17+95	8	1	..	49+95
	95	112	..	..	..	144
B. R. Trains .....	10	10	17	31	11	79
Motorcycles .....	1	3	1	..	..	5
Bicycles .....	3	3	2	..	..	8
Fifth Ave. Bus. ....	5	..	..	..	..	5
Runaway Horse .....	1	1	1	..	..	3
Coasting .....	3	6	1	..	1	11

1919.

	Man.	Brk.	Bronx.	Queens.	Rich.	Total.
Taxis .....	21	2	..	..	..	23
Automobiles (incl. private) .....	199	147	37	25	16	424
Commercial autos.....	156	67	23	6	3	255
Horse drawn veh.....	34	19	5	8	5	63
Street Cars.....	29	39	7	8	3	86
El. & Subway.....	29	25	10	3	..	67
R. R. trains.....	16	6	6	15	5	48
Fifth Ave. Bus.....	1	..	..	..	..	1
Motorcycle .....	4	2	..	..	..	6
Bicycle .....	3	1	..	..	..	4
Runaway Horse.....	2	1	..	..	..	3
Tractor Engines.....	..	..	..	..	1	1
Push Cart.....	1	..	..	..	..	1

20 In the District Court of the United States for the Southern District of New York.

WILLIAM HENRY PACKARD, Plaintiff,  
against

JOAB H. BANTON, District Attorney in and for the County of New York, and Charles D. Newton, Attorney General of the State of New York, Defendants.

STATE OF NEW YORK,  
*County of New York, ss:*

Patrick J. Devine, being duly sworn, deposes and says: That I reside at No. 147 East 97th Street, in the Borough of Manhattan, City of New York. I am married and have a wife and three children.

I have been the owner and driver of a taxicab for about eleven years past, and for the last two years my net income has not exceeded \$30 per week, and frequently was considerably less. In order to make this amount it was necessary for me to work on the average of 12 to 14 hours a day.

There are upwards of 15,000 taxicab owners in the same position that I am in in the City of New York. Most of them are married men and have families dependent upon them.

I have made inquiries from the Insurance Companies in the City of New York and I know of my own knowledge that the premium that they are asking for the bond in accordance with the law recently enacted is \$960 per year, which is approximately \$18.50 per week. It will not be possible for me or others similarly situated to pay a premium of that kind from the income that I and others

have been deriving from the operation of taxicabs and there will be no alternative but to give up that calling. However, I will be extremely handicapped in giving up this calling, for I really have no other, having followed the taxicab business for upwards of twelve years.

I have made inquiries amongst my friends in the hope of being able to get a private bond, as permitted by the statute, and I find that it will be impossible for me to get any individuals who are either willing or able to go on any private bond, such as is demanded by the statute, and I also know from conversations with other taxicab owners that they also will find it impossible to get private bondsmen.

It is a matter of common knowledge that there are thousands of automobile trucks doing a private trucking business in the City of New York, being common carriers from one point to another in the City of New York and from the City of New York to other points, and these individuals will not be compelled to give any bond in accordance with the requirements of the statute. It is a matter of common knowledge that these private common carriers have in the past had a great many more accidents than taxicab drivers have had.

PATRICK J. DEVINE.

Sworn to before me this 19th day of June, 1922.

MORRIS SCHNEIDER,  
*Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

1 In the District Court of the United States for the Southern District of New York.

WILLIAM HENRY PACKARD, Plaintiff,

against

JAMES H. BANTON, District Attorney in and for the County of New York, and Charles D. Newton, Attorney General of the State of New York, Defendants.

STATE OF NEW YORK.

*County of New York, ss:*

Gennaro Pucilla, being duly sworn, deposes and says:

That I reside at #2307 Tiebout Avenue, in the Borough of the Bronx, City of New York. I am married and have a wife and child.

I have been the owner and driver of a taxicab for about six years, and for the past two years my net income has not exceeded \$30 per week, and frequently was less than \$30 a week net. In order to make this amount it was necessary for me to work from ten to fifteen hours per day.

If I am compelled to pay a premium at the rate of \$18.50 per week—the amount that the Insurance Companies are asking—it will be impossible for me to make both ends meet. It will be practically impossible for me to go into another calling, because I have been driving a taxicab for upwards of six years and really have no other calling.

I have tried amongst my friends to secure some individuals who would be willing and able to go on my bond so as to avoid the necessity of having any insurance company bond, but I find that I have no friends who have sufficient money to qualify as bondsmen.

There are thousands of automobile trucks doing a private express business in the City of New York, being common carriers of personal property from one point to another in the City of New York and from the City of New York to other points, and as I understand it, these private expressmen will not be required to file a bond, although their trucks are quite as capable of doing injury to person and property as is our light taxicab, and, as a matter of fact, I know of my own knowledge that far more accidents are attributable to the automobile truck than are attributable to the taxicab.

GENNARO PUCILLA.

Sworn to before me this 19th day of June, 1922.

DAVID L. KLEIN,

*Notary Public, N. Y. Co., No. 21.*

22 In the District Court of the United States for the Southern District of New York.

WILLIAM HENRY PACKARD, Plaintiff,

against

JOAB H. BANTON, District Attorney in and for the County of New York, and Charles D. Newton, Attorney General of the State of New York, Defendants.

STATE OF NEW YORK,

*County of New York, ss:*

Morris Pollock, being duly sworn, deposes and says: that I reside at #709 East 9th Street, in the Borough of Manhattan, City of New York. I am married and have a wife and child. I have been the owner and driver of a taxicab for about seven years past, and for the last two years my net income has not exceeded Twenty Dollars per week.

In order to get this amount it was necessary for me to work from about 6.00 in the morning to about 9.00 o'clock at night, and I know of my own knowledge that there are thousands of taxicab owners who are in the same position that I am in. With a net income not in excess of Twenty Dollars per week, it will be impossible for me to pay a premium of \$18.50 for insurance, and this is the

amount the insurance Companies are asking for the bond as required by the law recently enacted.

I have no other calling, and I do not know what I can turn to in the event that I cannot make a living as a taxi driver.

It will be impossible for me to secure a private bondsman, for I have no friends who have sufficient money to qualify as such private bondsman.

It seems unfair that I should be compelled to give a bond when there are thousands of automobile trucks on the streets doing a private express business and carrying personal property from one point in the City of New York to another point in the City of New York, and these individuals will not be compelled to give a bond, although it is a matter of common knowledge that far more accidents are due to automobile trucks than to taxicabs.

MORRIS POLLOCK.

Sworn to before me this 19th day of June, 1922.

DAVID L. KLEIN,  
*Notary Public, N. Y. Co., No. 21.*

23 In the District Court of the United States for the Southern District of New York.

WILLIAM HENRY PACKARD, Plaintiff,

against

JOSEPH H. BANTON, District Attorney in and for the County of New York, and Charles D. Newton, Attorney General of the State of New York, Defendants.

CITY OF NEW YORK.

*County of New York, ss:*

Louis Warshaw, being duly sworn, deposes and says: I reside at 652 West 114th Street, in the Borough of Manhattan, City of New York. I am a married man. I have been the owner and driver of a taxicab for the past seven years and for the past two years my net income has averaged from twenty-five to thirty dollars per week. In order to make this amount it was necessary for me to work about from ten to twelve hours per day.

I know of my own knowledge that there are thousands of taxicab drivers in the City of New York who are in practically the same position that I am in. I know from inquiries made that Insurance Companies are asking \$960.00 per year for the premium for the bond required by law and I know that it will be impossible for me and for others situated similarly to pay any such rate for insurance. I have attempted to secure private bondsmen, but I find that it will be impossible for me to get anyone who will be able to qualify for the amount required. In the circumstances there will be nothing that I can do but go into some other calling, and just what other calling I

can go to I cannot now figure out, because I know of nothing but the taxicab business.

I know of my own knowledge that there are a great number of private automobile trucks that do a private expressing business in the City of New York. These automobile trucks carry personal property from one point in the City of New York to another point in the City of New York and elsewhere, and under the law now enacted it will not be necessary for these private expressmen to carry any insurance, although I know of my own knowledge that these private expressmen have had a great many more accidents than have had taxi drivers.

LOUIS WARSHAW.

Sworn to before me this 19th day of June, 1922.

DAVID L. KLEIN,

*Notary Public, N. Y. Co., No. 21.*

[Endorsed:] In the United States District Court for the Southern District of New York. William Henry Packard, Plaintiff against Joab H. Banton, District Attorney in and for the County of New York, and Charles D. Newton, Attorney General of the State of New York, Defendants. Bill of complaint, order to show cause and affidavits. House, Grossman & Vorhaus, Attorneys for Plaintiff, 115 Broadway, Borough of Manhattan, New York City.

24 In the District Court of the United States for the Southern District of New York.

WILLIAM HENRY PACKARD, Plaintiff,

against

JOAB H. BANTON, District Attorney in and for the County of New York, and Charles D. Newton, Attorney General of the State of New York, Defendants.

CITY, COUNTY, AND STATE OF NEW YORK, ss:

Charles C. Schwartz, being duly sworn, deposes and says:

I am a citizen of the United States and a resident of the State of New York. I am an attorney and counselor at law duly admitted to practice in the State of New York and also in the District Court of the United States for the Southern District of New York, and am associated with the firm of House, Gossman & Vorhaus, solicitors for the plaintiff herein.

On the 20th day of June, 1922, between the hours of 12.15 P. M. and 4 P. M. I went to the office of the Chief Medical Examiner of the City of New York, room 257 in the Municipal Building, Borough of Manhattan, City of New York, and there made a transcript of the official records of the Chief Medical Examiner, showing the deaths attributable to accidents upon the streets and highways of the City of New York during the years 1920 and 1921.



Annexed hereto is an accurate tabulation of the said records of the  
Medicinal Department of the City of New York.

CHARLES C. SCHWARTZ.

Sworn to before me this 21st day of June, 1922.

[SEAL.]

DAVID L. KLEIN,  
Notary Public, N. Y. Co., No. 21.

1920.

*Deaths.*

	Man.	Bklyn.	Bronx.	Queens.	Rich.	Total.
Taxis .....	22	2	2	..	..	26
Automobiles (including private cars) .....	203	125	35	28	12	403
Auto Trucks .....	138	83	26	10	4	261
Horse-drawn Vehicles ..	24	9	..	1	..	34
Street Cars .....	25	32	6	6	..	69
El. & Subway .....	21	11	5	2	..	39
R. R. Trains .....	8	9	3	15	12	47
Motorcycles .....	..	2	1	2	..	5
Tractor .....	..	..	..	..	1	1
6th Ave. Bus. ....	3	..	..	..	..	3
Runaway Horse .....	1	..	..	..	1	2

Through collisions  
as follows:

Autos .....	2	8	1	6	2	19
Auto Trucks .....	..	1	..	..	1	1
Auto & Street Car .....	2	3	..	1	2	8
Auto & Horse-drawn Vehicle .....	2	..	1	..	..	3
Auto & B. R. T. Train ..	1	..	..	..	..	1
Auto & Elevated Pillar ..	1	..	..	..	..	1
Auto & Tree .....	1	1	2	..	..	4
Auto & Motorcycle .....	1	1	..	1	..	3
Auto & Pole .....	..	1	1	2	..	4
Auto & Trolley Pole .....	..	1	2	..	..	3
Auto & Bicycle .....	..	7	..	..	2	9
Auto Truck & Bicycle ..	..	2	..	..	..	2
Auto Truck & Motorcycle	..	1	..	..	..	1
Auto Truck & Street Car	..	1	..	..	..	1
Motorcycles .....	..	..	1	..	..	1
Street Car & Horse-drawn Vehicles .....	3	1	1	..	..	5
Auto & Fence .....	..	..	1	..	..	1

1921.

*Deaths.*

	Man.	Bklyn.	Bronx.	Queens.	Rich.	Total
Taxis .....	39	6	6	..	2	53
Automobile (including private cars) .....	216	171	47	37	7	478
Auto Trucks .....	154	60	37	2	2	255
Horse-drawn Vehicles...	22	17	4	3	1	47
Street Cars .....	31	30	8	4	2	75
El. & Subway.....	22	10	3	..	..	35
R. R. Trains.....	8	9	2	15	5	39
Motoreycles .....	1	3	..	..	..	4
5th Ave. Bus.....	1	..	..	..	..	1
Bicycles .....	..	4	..	..	..	4

Through collisions  
as follows:

Autos .....	7	7	7	11	1	33
Auto & Horse-drawn Vehicle.....	3	1	..	1	..	5
Auto & Street Car.....	2	3	..	..	..	5
Auto & Tree.....	..	..	3	..	..	3
Auto & El. Pillars.....	3	2	..	..	..	5
Auto & Bicycle.....	6	7	1	4	1	19
Auto & Motoreycle.....	..	..	2	1	..	3
Auto & Concrete Mixer. ....	..	..	1	..	..	1
Auto & R. R. Train....	..	..	..	1	1	2
Motoreycle & Pole .....	..	1	1	..	1	3
Motoreycle & Post .....	1	..	..	..	..	1
Motoreycle & Elevator Pillar.....	..	..	1	..	..	1
Horse-drawn Vehicles ..	2	..	..	..	..	2
Horse-drawn Vehicles & Tree.....	..	..	1	..	..	1

[Endorsed:] In the United States District Court for the Southern District of New York. William Henry Packard, Plaintiff, against Joab H. Banton, District Attorney in and for the County of New York, and Charles D. Newton, Attorney General of the State of New York, Defendants, Additional Affidavit in Support of Motion for Judgment on the Pleadings, filed by Plaintiff, 115 Broadway, Borough of Manhattan, New York City.

26 In the District Court of the United States for the Southern District of New York.

WILLIAM HENRY PACKARD, Plaintiff,  
against

JOAB H. BANTON, District Attorney in and for the County of New York, and Charles D. Newton, Attorney General of the State of New York, Defendants.

STATE OF NEW YORK,  
County of New York, ss:

William Henry Packard, being duly sworn, deposes and says: That I am the plaintiff in the above entitled matter.

That the four cars referred to in the Bill of Complaint, owned by me, cost me \$11,200, and are worth that sum to me providing I can continue in the business of operating taxicabs, but if for any reason I shall be unable to continue in the business of operating taxicabs, I would not be in a position to realize more than fifty per cent of the cost thereof to me.

I have inquired amongst my relatives and friends for the purpose of ascertaining whether it would be possible for me to get individuals to go on private bonds for me, so as to avoid the necessity of having any Insurance Company bonds, but I have neither friends nor relatives who would be able and willing to qualify as individual bondsmen. Therefore, if the law is upheld, I will be compelled to secure Insurance Company bonds, or else go out of business. It would cost \$960 per year per car, which means an expense of \$3,840 per year to me. In other words I am faced with this situation, that either I must pay \$3,840 per year for insurance or else I must sacrifice my business and the good-will thereof—which good-will I value in excess of \$5,000—and at the same time I would be compelled to sacrifice the four cars at a loss to me in excess of \$5,000 on the cars, making a loss to me in toto in excess of \$10,000.

On the other hand, if I were to operate my taxicabs without securing bonds, and if the law were held to be constitutional, I would be liable as a misdemeanor, and I am informed that the maximum penalty for a misdemeanor is imprisonment for one year or a fine of \$500, or both, so that if I were to operate my four cars, I would be liable for each operation in sums aggregating \$2,000.

WM. H. PACKARD.

Sworn to before me this 22d day of June, 1922.

MORRIS SCHNEIDER,  
Notary Public, Kings Co.

Cert. filed in N. Y. Co.

[Endorsed:] In the United States District Court for the Southern District of New York. William Henry Packard, Plaintiff, against

Joab H. Banton, District Attorney in and for the County of New York, and Charles D. Newton, Attorney General of the State of New York, Defendants. Additional Affidavits. House, Grossman & Vorhaus, Attorneys for Plaintiff, 115 Broadway, Borough of Manhattan, New York City.

27 In the District Court of the United States for the Southern District of New York.

WILLIAM HENRY PACKARD, Plaintiff,  
against

JOAB H. BANTON, District Attorney in and for the County of New York, and Charles D. Newton, Attorney-General of the State of New York, Defendants.

STATE OF NEW YORK,  
*County of Albany, ss:*

Hervey J. Drake, being duly sworn, deposes and says: That he is Counsel for the Insurance Department of the State of New York, and as such state officer is familiar with the matters in said office which pertain to bonds and policies of insurance required by Chapter 612 of the laws of 1922, the statute which requires persons engaged in the business of transporting passengers for hire in cities of the first class to furnish either a personal bond, a surety company bond or a policy of insurance in the amount of \$2,500 conditioned to pay damages obtained against the person in such business for death, personal injuries or damage to property occurring in the operation of motor vehicles used in said business.

Upon information and belief, that before the enactment of this law extended public agitation had arisen over the fact that owners of public conveyance of this character, and especially those engaged in the taxicab business, were financially irresponsible and unable  
28 to meet judgments obtained against them arising out of the negligent operation of such motor vehicles in congested cities, that is to say, in cities of the first class.

That such a condition was a matter of common knowledge. Motor vehicles of this character, owing to their constant operation throughout most of the twenty-four hours, were peculiarly more subject to accidents than privately owned cars which did not use the streets so frequently or conduct a business for gain upon the public thoroughfares.

That from the records in the office of the Police Commissioner of the City of New York it appears that during the year 1921 persons killed by taxicabs totaled 60, while 1,996 persons were injured by taxicabs. Theretofore the Additional Grand Jury for the County of New York in the August Term 1920 had made a Presentment to the Court of General Sessions of the Peace in the County of New York (which Presentment was signed also by Richard E. Enright, Police Commissioner, Judges Otto Rosalsky, Morris Koenig and C. Carin,

Judges of the General Sessions) calling the Court's attention to the loss of life and property occasioned by motor vehicle operation on the streets of New York City (a copy of which Presentment is hereto attached) and recommending that persons or corporations engaged in the business of transporting persons for hire should be required to file a bond to pay damages resultant from careless operation. Witnesses before the Grand Jury included Chief Magistrate William McAdoo, Magistrate Frederick B. House, Magistrate W. Bruce Cobb, John Gilchrist, Commissioner of Licenses of the City of New York, John Drenan, in charge of Division of Licensing Vehicles of the License Department of the City of New York, Francis Hugo, Secretary of the State of New York, and Police Commissioner Richard E. Enright, Chief City Magistrate William McAdoo for a long time previous had recommended a statute of this nature, and observations of the following nature had been frequently made by him:

"The husband of a very worthy woman—mother of seven little children—was run over and killed by the culpable negligence of a driver running a motor car of which he was the owner. There is no doubt whatsoever of his guilt and I have sent the case to the Grand Jury. The widow has sued him for damages, but it appears that aside from the mortgaged car he has practically no property. There are thousands of such pitiful cases and they happen here frequently. If this man had been compelled to give a bond this woman would be assured of some recompense. As it is now, she and her helpless little family are left to the charity of friends. I know among my own friends not a few who have been severely and permanently injured by criminally reckless drivers, but so far as compensation is concerned their cases are hopeless, by reason of the fact that the drivers and owners of these vehicles are in a financial way utterly irresponsible."

While I have been unable to ascertain the number of unpaid judgments in cities of the first-class against owners of motor vehicles transporting for hire, it has been stated by Hon. Victor R. Kaufman who introduced the bill in the Assembly, that statistics would show as many as 12,000 unpaid judgments in the City of New York for negligence against persons in the taxicab business. That since the enactment of Chapter 612 of the Laws of 1922, requiring the bond or policy of insurance from persons in the business of transporting passengers, there has been filed as required by law the office of the State Department of Insurance by the Town Planning Bureau a schedule of rates for corporations issuing surety bonds. This schedule shows that taxicabs can obtain coverage for as low a premium as \$5.00 a car per month ranging up to \$25.00 per month depending upon whether collateral is deposited with the surety company, as follows:

TABLE I.

*Collateral and Premiums.*

Schedule for Individual Cars and Owners Operating 1 to 19 Taxicabs.

Initial collateral deposit per car.	Surety carries.	Monthly premium per car.	
\$2,500	\$0	\$5.00	
2,000	500	10.00	
1,500	1,000	12.50	
1,000	1,500	15.00	
750	1,750	17.50	
500	2,000	20.00	
250	2,250	22.50	
0	2,500	25.00	plus \$20.00 per month regarded as collateral. Total \$45.00 per month.

On fleets of ten or more this rate applies to minimum collateral of \$2,500 for fleet; less than ten, \$250 per car.

The surety companies, I am informed by letter, have already quoted a rate of \$5.87½ per cab per month, less 10%, to a group of 1,500 cabs.

The above figures are in contrast to the \$960 per year per car for taxicabs to be charged by the stock liability insurance companies for a policy of insurance, as indicated by a schedule of rates filed 31 with the State Department of Insurance by the National Bureau of Casualty and Surety Underwriters. The policy of insurance to be used by the stock companies, however, includes accidents occurring anywhere in the State, which is not necessary under the law. Mutual casualty insurance companies will charge \$540 a year for a policy of insurance for taxicabs.

The foregoing rates as approved by the Superintendent of Insurance are based on what experience was available, mostly from cities outside New York State, and it is hoped are higher than future experience will disclose to be necessary.

Whatever the cost of compliance is, there is always the personal bond which costs nothing, and I am informed by the State Tax Commission that upwards of 1,000 cars have already taken steps to furnish personal sureties.

Deponent believes that an injunction ought not to issue. That by a recent statute of this State (Chapter 660 of 1922, Sec. 141b of the Insurance Law) any insurance rates as fixed or approved by the Superintendent of Insurance may be reviewed by certiorari in our State courts, and if excessive or unreasonable may be adjusted by the court. The statute provides:

"It shall be the duty of the superintendent of insurance after due notice and a hearing before him, to order an adjustment of the rates on any risks or class of risks whenever it shall be found by him that such rates will produce an excessive, inadequate or unreasonable profit.

The findings, determinations and orders of the superintendent of insurance shall be subject to review on the merits by certiorari order in the supreme and appellate courts of this state. In the event of final determination against any insurer, any overcharge during the pendency of such proceedings shall be refunded with interest on demand to the persons entitled thereto."

HERVEY J. DRAKE.

Sworn to before me this 28th day of June, 1922.

[SEAL.]

CHARLES S. CRIPPEN,  
*Notary Public, Albany County.*

33

MS:MC. 8/4/22.

To the Honorable John F. McIntyre, Judge of the Court of General Sessions of the Peace in and for the County of New York.

SIR:

The additional Grand Jury of the County of New York for the August, 1920, Term, desires respectfully to make the following report to the Court in the matter of its investigation of the violation of the Highway Law of New York by drivers of motor vehicles;

In Your Honor's charge to this Grand Jury you called attention to the violation by drivers of motor vehicles of the laws of this state and the ordinances of the city and of the utter disregard of the law by such drivers amounting to a menace to the public of this county. The Grand Jury, pursuant to your Honor's direction, took up this matter and has devoted considerable time to the investigation of conditions in the City of New York resulting in the loss of many lives and the injury to persons by drivers of motor vehicles due to the reckless driving of chauffeurs and operators of motor driven vehicles. Witnesses were called before the Grand Jury and testimony and full and free expression of views on these conditions existing in this city were had from Chief Magistrate William McAdoo, Magistrate Frederick B. House, Magistrate W. Bruce Cobb, John Gilchrist, Commissioner of Licenses of the City of New York, John Drenan, in charge of Division of Licensing Vehicles of the License Department of the City of New York, Francis Hugo, Secretary of the State of New York, and Police Commissioner Richard E. Enright.

In addition, many members of the Grand Jury have personally attended in the Traffic Court and observed conditions existing there. From these sources much information and data were obtained, and as a result thereof the Grand Jury begs leave to submit to this Court the following presentment:



It is recommended that all persons or corporations engaged in carrying passengers for hire or in the transportation of merchandise in any motor vehicle should be required to file a bond in the sum of \$5,000 to pay any damages that might result from the careless or reckless driving of chauffeurs. Passage of such a law, if carried into effect, would help to provide a safeguard against the careless and reckless operation of motor vehicles and act as a deterrent for inefficient drivers upon our highways, and the amendment of the Motor Vehicles Law in this respect covering these suggestions of the Secretary of State is recommended by this Grand Jury, as it feels that while the filing of such a bond on the cases of financially — owners of vehicles would entail no additional burden on them, many financially irresponsible owners of taxicabs plying upon the public highways frequently injure persons who cannot be compensated in money damages for the injuries they have thus sustained. If such a chauffeur or driver were required to file a bond, even though the number of accidents might not be decreased, at least pedestrians who are injured by such financially irresponsible drivers would be able to receive some compensation for the injuries and accidents to which they have thus been subjected.

Dated, New York, October 28th, 1920.

In addition to Grand Jury signed by following:

RICHARD E. ENRIGHT,  
*Police Commissioner,*  
OTTO ROSALSKY,  
MORRIS KOENIG,  
C. CRAIN,  
*Judges General Session.*

35 In the District Court of the United States for the Southern District of New York.

WILLIAM HENRY PACKARD, Plaintiff,  
against

JOAB H. BANTON, District Attorney in and for the County of New York, and Charles D. Newton, Attorney-General of the State of New York, Defendants.

STATE OF NEW YORK,  
*City and County of New York, ss:*

Jacob Kendrick Upton, being duly sworn, deposes and says: That I reside at Montclair, New Jersey and I am engaged in the insurance business at 27 William Street, New York City. During the past nineteen years, I have been engaged in the insurance business, specializing to a great extent in liability and property damage insurance on automobiles of all classes. For four years I was associated with the Ocean Accident & Guarantee Corporation, Ltd., holding

various positions, including the managership of their New York Department, in which position I had complete charge of the underwriting of all New York automobile insurance, written by that company. For three years I was associated in an executive capacity with the New York General Agency of the Continental Casualty Company of Chicago, Illinois and supervised the underwriting of all automobile insurance written by that company in this territory.

At the present time I am Vice President and General Manager of the World Mutual Automobile Casualty Insurance Company, Inc., operating in the City and throughout the State of New York. I am the executive head of that corporation in all underwriting and loss adjustments.

This company up to the present time has insured more cars coming within the purview of the new Highway Law than all other companies combined.

From investigation which has been necessary for me to make in connection with my business, I am satisfied that at least sixty to sixty-five per cent of the automobiles, other than taxicabs, operating in New York City, carry liability insurance; of the taxicabs operating in New York City, not more than five per cent carry any liability insurance whatsoever; that there are operating in New York about 225,000 automobiles other than taxicabs and about 13,000 taxicabs; that during the year 1921, according to the figures of the Police Department of the City of New York that I have examined, there were killed and injured by automobiles other than taxicabs in the City of New York 15,564 persons, being a ratio of one to twenty-two, that according to the same figures, there were killed and injured by taxicabs within the city of New York in the year 1921, 2,056 persons, being ratio of one to six.

I have read the Bill of Complaint herein in the Affidavit of the Plaintiff verified the 17th day of June, 1922. During the past week I have investigated the circumstances under which the Plaintiff conducts his business and have made inquiries as to the average earnings of taxicab operators in the city of New York. My investigation satisfies me that such average net earnings are at least \$50.00 (Fifty

Dollars) per week. I also learned that the Plaintiff's profit of \$35.00 per week of cab is the net profit retained by him after the payment of operation and maintenance charges, wages to chauffeurs, which wages are between Forty and Fifty Dollars (\$40-50) per week.

That the rate being charged by all Mutual Automobile Insurance Companies for the insurance required by Chapter 612, the Laws of 1922, is Five Hundred Forty Dollars (\$540.00) or Ten Dollars 40/100 (\$10.40) per week.

JACOB KENDRICK UPTON.

Sworn to before me this 29th day of June, 1922.

[Seal Phyllis Sumter.]

PHYLLIS SUMTER,

*Commissioner of Deeds, New York County, No. 139.*

Register's No. 23671.

My Commission expires March 1, 1928.

38 In the District Court of the United States for the Southern District of New York.

WILLIAM HENRY PACKARD, Plaintiff,  
against

JOAB H. BANTON, District Attorney in and for the County of New York, and Charles D. Newton, Attorney-General of the State of New York, Defendants.

STATE OF NEW YORK,  
*City and County of Albany, ss:*

William Cooper, being duly sworn, deposes and says: I reside at 536 East 5th Street, in the City of New York, and I am thirty-one years of age. I drive my own taxicab and operate throughout the City of New York and have done so for the past five years. My average earnings for the past three months have been \$100.00 per week, including tips. It costs me \$35.00 per week to operate and maintain my taxicab, including depreciation. Of the \$35.00 of expense per week, \$10.00 is depreciation on a new Dodge bought last March. The greater number of taxicab operators use second-hand cars on which the depreciation has been absorbed.

The Ordinances of the City of New York permit a charge of 30¢ for the first half mile or any fraction thereof for not more than two persons, and 40¢ for three or more passengers; 10¢ is allowed for each succeeding quarter of a mile or fraction thereof for two passengers, and 10¢ for every succeeding sixth of a mile for three persons.

39 For each piece of luggage carried outside, excepting handbags and suit cases, 20¢ is charged. The waiting time allowed under the Ordinance is \$1.50 per hour. However, three-quarters of the taxicab drivers do not charge the maximum amount permitted by the City Ordinances, but charge only 40¢ for the first whole mile and 30¢ for each additional mile. In our business the average charge for a ride is between 60¢ and 70¢.

WILLIAM COOPER.

Sworn to before me this day of 27th — 1922.

PHYLLIS SUMTER,  
*Commissioner of Deeds, New York County, No. 139.*

Register's No. 23671.  
My Commission expires March 1, 1928.  
Notary Public.

40 In the District Court of the United States for the Southern District of New York.

WILLIAM HENRY PACKARD, Plaintiff,  
against

JOAB H. BANTON, District Attorney in and for the County of New York, and Charles D. Newton, Attorney-General of the State of New York, Defendants.

STATE OF NEW YORK,  
*City and County of New York, ss:*

William E. McGuirk, being duly sworn, deposes and says: "I reside at 26 DeKoven Court, Borough of Brooklyn, City of New York. I am Treasurer and General Manager of the American Yellow Taxi Operators, Inc. owning and operating 303 taxicabs made by the same manufacturer as those operated by the plaintiff and costing within \$150 of the same as his.

"I have been engaged in the manufacture and sale of taximeters, the sale of taxicabs and their operation over 15 years in the City of New York.

"I have read the bill of complaint and the supporting affidavits of the plaintiff. I know that the plaintiff operates what is known as 'Green Flag Taxis' and does not charge the maximum rate permitted by ordinance.

41 "I am of the opinion, from my general knowledge of the operations of taxicabs in the City of New York, that the average gross earnings upon a taxicab well managed in the City of New York over a period of twelve months is not less than \$210 per week, operated 20 hours per day by two drivers. It is the general custom to double shift the cabs. The average net profit over the same period from each cab is not less than \$60 per week."

WILLIAM E. MCGUIRK.

Sworn to before me this 29th day of June, 1922.

[Notarial Seal.]

MAZIE E. WOCKTELL,  
*Notary Public, New York County.*

New York Register's No. 4035.

Commission Expires March 30, 1924.

42 This was all the evidence introduced by the respective parties in support and in opposition to the motion for preliminary injunction in the above entitled cause.

The foregoing statement of facts is in all respects hereby approved and settled.

Done in open Court this 15 day of August, 1922.

CHARLES M. HOUGH,  
*U. S. Circuit Judge.*

43 United States District Court, Southern District of New York

WILLIAM HENRY PACKARD, Plaintiff,

against

JOAB H. BANTON, District Attorney in and for the County of New York, and Charles D. Newton, Attorney-General of the State of New York, Defendants.

It is hereby stipulated and agreed that the foregoing statement is in all respects correct and it is consented that the same be approved and settled.

August 9th, 1922.

HOUSE, GROSSMAN & VORHAUS,

*Attorney- for Plaintiff.*

JOHN CALDWELL MYERS,

*Attorney for Defendant Joab H. Banton.*

EDWARD G. GRIFFIN,

*Attorney for Defendant Charles D. Newton.*

*Deputy Attorney General.*

A. U.

Endorsed: Filed Aug. 16, 1922.

44 United States District Court for the Southern District of New York.

WILLIAM HENRY PACKARD, Complainant,

vs.

JOAB H. BANTON, District Attorney in and for the County of New York, and Charles D. Newton, Attorney-General for the State of New York, Defendants.

*Petition for Appeal.*

To the Honorable Judge of the said Court:

And now comes William H. Packard, complainant, by House, Grossman & Vorhaus, Esqs., his attorneys, and feeling himself aggrieved by the final decree of this court, entered on the 22 day of July, 1922, hereby prays that an appeal may be allowed to him from the said decree of the Supreme Court of the United States, and in connection with this petition, the petitioner herewith presents his assignment of errors.

HOUSE, GROSSMAN & VORHAUS,

*Attorneys for Complainant.*

Endorsed: Filed Aug. 3, 1922.

45 United States District Court for the Southern District of New York.

WILLIAM HENRY PACKARD, Complainant,

vs.

JOAB H. BANTON, District Attorney in and for the County of New York, and Charles D. Newton, Attorney-General for the State of New York, Defendants.

*Assignment of Errors.*

Now comes the appellant, William H. Packard, by House, Grossman & Vorhaus, Esqs., his attorneys, and in connection with his petition for appeal says that in the record, proceedings and in the final decree aforesaid, manifest error has intervened to the prejudice of the appellant, to wit:

1. The Court erred in denying the motion of the complainant for a preliminary injunction and in not holding that the act of the General Assembly of the State of New York, entitled "An Act to amend the highway law, in requiring indemnity bonds or insurance policies from owners of motor vehicles transporting passengers for hire in cities of the first class", is unconstitutional and violates the Fourteenth Amendment to the Constitution of the United States, providing that no State should deny to any person within its jurisdiction the equal protection of the laws nor deprive a person of his life, liberty and property without due process of law.

46 2. The Court erred in holding that the bill of complaint does not state facts sufficient to constitute a cause of action and in dismissing the bill without prejudice.

Wherefore appellant prays the decree aforesaid may be reversed with directions to grant the relief prayed for in the bill of complaint, etc.

HOUSE, GROSSMAN & VORHAUS,

*Attorneys for Appellant.*

Endorsed: Filed Aug. 3, 1922.

47 Know all men by these presents, that we, William Henry Packard, as principal, and National Surety Company, of No. 115 Broadway, Borough of Manhattan, City of New York, as Surety, are held and firmly bound unto Joab H. Banton, District Attorney in and for the County of New York, and Charles D. Newton, Attorney General of the State of New York, in the full and just sum of Two Hundred and Fifty (\$250.00) Dollars, to be paid to the said Joab H. Banton, District Attorney in and for the County of New York, and Charles D. Newton, Attorney General of the State of New York, certain attorney, executors, administrators or assigns, to which payment well and truly to be made, we bind our-

selves, our heirs, executors and administrators jointly and severally by these presents. Sealed with our seals and dated this 2nd day of August, in the year of our Lord one thousand nine hundred and twenty-two.

Whereas, lately at a term of the District Court of the United States for the Southern District of New York, in a suit depending in said Court between William Henry Packard, complainant, and Joab H. Banton, District Attorney in and for the County of New York, and Charles D. Newton, Attorney General of the State of New York, Defendants, a decree was rendered against the said William Henry Packard, denying his motion for a preliminary injunction and dismissing his bill without prejudice, and the said William Henry Packard having obtained an appeal and filed a copy thereof in the Clerk's office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said Joab H. Banton, District Attorney in and for the County of New York, and Charles D. Newton, Attorney General of the State of New York, citing and admonishing them to be and appear at a Supreme Court of the United States at Washington within thirty days from the date thereof.

Now the condition of the above obligation is such that if the said William Henry Packard shall prosecute his appeal to effect and answer all damages and costs, if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

WILLIAM H. PACKARD. [SEAL.]  
NATIONAL SURETY COMPANY,  
By F. G. BEATTIE, [SEAL.]  
*Resident Vice-President.*

Attest:

M. C. McGRATH, [SEAL.]  
*Resident Assistant Secretary.*

Sealed and delivered in presence of  
LOUIS TYROLER.

Endorsed: Approved Aug. 2, 1922. Augustus N. Hand, D. J.  
Endorsed: Filed Aug. 3, 1922.

49 United States District Court for the Southern District of New York.

WILLIAM HENRY PACKARD, Complainant,

vs.

JOAB H. BANTON, District Attorney in and for the County of New York, and Charles D. Newton, Attorney General for the State of New York, Defendants.

On reading the petition of the complainant, William Henry Packard, it is



Ordered that an appeal be and the same is hereby allowed to said complainant from the decree of this Court entered on the 22nd day of July, 1922, to the Supreme Court of the United States on condition that said complainant file his appeal bond in the sum of Two Hundred Fifty Dollars (\$250.00), as provided by law.

And for good cause shown it is

Ordered that the time within which the appellant may file his record in the Supreme Court of the United States be and the same is hereby extended to and including the third day of October, 1922.

Dated, New York, August 2, 1922.

AUGUSTUS N. HAND,  
*United States District Judge.*

Endorsed: Filed August 3, 1922.

50 In the District Court of the United States, Southern District  
of New York.

WILLIAM HENRY PACKARD, Plaintiff,  
against

JOAB H. BANTON, District Attorney in and for the County of New  
York, and Charles D. Newton, Attorney General of the State of  
New York, Defendants.

It is hereby stipulated and agreed, that the foregoing is a true  
transcript of the record of the said District Court in the above-entitled  
matter as agreed on by the parties.

Dated August 29, 1922.

HOUSE, GROSSMAN & VORHAUS,  
*Attorneys for Plaintiff.*  
JOHN CALDWELL MYERS,  
*Attorney for Defendant Joab H. Banton.*  
EDWIN G. GRIFFIN,  
*Deputy Attorney General,*  
*Attorney for Defendant Charles D. Newton.*

51 UNITED STATES OF AMERICA,  
*Southern District of New York, ss:*

WILLIAM HENRY PACKARD, Plaintiff,

vs.

JOAB H. BANTON, District Attorney in and for the County of New  
York, and Charles D. Newton, Attorney General of the State of  
New York, Defendants.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the  
United States of America for the Southern District of New York,  
do hereby Certify that the foregoing is a correct transcript of the

record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 29th day of August, in the year of our Lord one thousand nine hundred and twenty-two and of the Independence of the said United States the one hundred and forty-seventh.

[Seal of District Court of the United States, Southern District of N. Y.]

ALEX. GILCHRIST, JR.,  
*Clerk.*

Endorsed on cover: File No. 29,157. S. New York D. C. U. S. Term No. 607. William Henry Packard, appellant, vs. Joab H. Banton, as district attorney in and for the county of New York, and Charles D. Newton, as attorney general for the State of New York. Filed September 22nd, 1922. File No. 29,157.

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